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FILED
JUN 1 1971
E. ROBERT SEAVER, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1729~~ 70-187

PATTIE BLACK COTTON, ET AL.,
Petitioners,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.,
Respondents.

BRIEF OF SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL., RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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COMMERCIAL PRINTING COMPANY, RALEIGH, N. C.

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The Scotland Neck City Board of Education, et al., Respondents herein, oppose the granting of the Petition for Writ of Certiorari filed by Pattie Black Cotton, et al., Petitioners, to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinions below are as described in the Petition.

JURISDICTION

The jurisdictional requisites are set forth adequately in the Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in the Petition.

QUESTION PRESENTED

We do not challenge Petitioners' statement of "Question Presented". However, we submit that it could be stated more correctly and succinctly thus:

Is it unconstitutional " . . . to create school systems of substantially different racial composition"?

STATEMENT

We refer to, and include here by reference, Respondents' "Statement" in their Brief in reply to the Petition for Certiorari filed by the United States of America in the companion case number 1614.

ARGUMENT

We refer to, and include here by reference, Respondents' "Argument" in their Brief in number 1614 in reply to the Petition for Certiorari filed by the United States of America.

Petitioners in this cause, number 1729, hinge their whole argument on differences in racial composition. They base their case on the tabulation set forth at the top of page five of the Petition. They argue that either a statute creating a new school district, or a Board plan reassigning students to schools in the district, violates the Constitution of the United States if it makes a substantial variation from the average racial ratio of the old district. Petitioners say plainly that the North Carolina statute is unconstitutional because the new Scotland Neck district would have an initial

ratio of 57% white to 43% black whereas the ratio in the total district from which Scotland Neck was carved, both rural and city, was 27% white to 73% black.

In so doing, Petitioners stand flatly on the position stated by the Court of Appeals dissenters that the statute was unconstitutional because of the change of the black-white ratios. We adverted to those dissents in our reply in number 1614 to the Petition for Certiorari by the United States Government. On pages seven and eight of our Brief in reply we give our answer to the dissenters' positions. We refer to those pages.

It is very notable that the Petitioners in this case, number 1729, did not even refer to the momentous decision of this Court handed down on the 20th day of April, 1971, *Swann v. Charlotte-Mecklenburg Board of Education*, number 281, argued October 12, 1970, decided April 20, 1971. Petitioners' omission to refer to the *Swann* case is even more notable in view of the fact that we relied on the *Swann* case in our Brief filed in reply to the Petition for Certiorari filed by the United States of America in number 1614. That Brief was received by two of the counsel signing the Petition in this case, number 1729, on May 2nd and 3rd, 1971, respectively.

In addition to what we said in that Brief in number 1614, (including a quotation from the *Swann* case, pages 19-20 of the United States Law Week report, to the effect that if the district judge had required " . . . as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse."), we wish to add an additional quotation from the *Swann* case. On page twenty-three of the United States Law Week report of opinion in that case, the Court said, "Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign

pupils to schools nearest their homes." Notwithstanding that plain language, Petitioners fail to point out any constitutional violation in the establishment of the Scotland Neck district.

That district followed natural city limit lines, contained no "gerrymandering", and had a nearly evenly mixed population of black and white with no indication in the record of the residential population composition having resulted in any way from *de jure* segregation or racial discrimination in any form. In the new Scotland Neck district there was to be complete and total integration. There was only one school. All of the white children and all of the black children within the city limits of Scotland Neck would be assigned to that integrated school. Transfers would be effectuated only under the control of the Federal District Court and in accordance with such plan as might be approved by the Federal District Court. The very establishment of such a new school district completely dismantled every vestige of segregation within the borders of the City of Scotland Neck. There was not even a root left. How can any black student in a rural school assert that he or she has a constitutional right to have white students living in Scotland Neck assigned to his or her rural school?

Petitioners have not attempted to meet that point.

Petitioners have not attempted to meet any one of the points made in the important Section IV of the opinion in the *Swann* case. It must be that the Petitioners still cling to their contention made in the *Swann* case that a substantial variation from a fixed norm of district ratios is, in itself, unconstitutional. It is clear that Petitioners still cling to their contention that there is an affirmative duty to integrate or to mix even if the proposed change is not directed to a remaining vestige of the structure of discriminatory segregation.

We respectfully submit that Petitioners are merely arguing in their Petition that the unanimous pronouncement of this Court in the *Swann* case was wrong.

CONCLUSION

We have here a case of an attempt to provide better education for white and black students; a case of community effort toward peaceful progress rather than racial strife; a case of an effort to prove to all of Halifax County and to the world that, in a school of nearly evenly balanced racial ratios, white and black children can work and live in peace and harmony and with due respect one for the other.

We submit, as we have set forth above, that the question here involved is answered by the pronouncements of this Court in *Swann v. Board of Education, supra.* Therefore, we submit that the matter should be concluded now by a denial of certiorari.

For the foregoing reasons it is prayed that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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